

CHAPTER 11

LOAN LIQUIDATION

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LOAN LIQUIDATION

This Chapter includes forms, letters, and the SOP Chapter on Liquidations to familiarize you on the SBA loan liquidation process. The process and forms vary depending on the type of loan. Specifically, this Chapter includes:

- Request for Liquidation Status Form
- Regular 7(a) Loan Liquidation Letter and Attachments
- LowDoc Loan (Over \$50,000) Liquidation Letter and Attachments
- LowDoc Loan (Under \$50,000) Liquidation Letter and Attachments
- PLP Loan Liquidation Letter and Attachments
- SBA Form 1150, Offer in Compromise
- SBA Form 770, Financial Statement of Debtor
- Chapter 8, Lender-Serviced Liquidations, from SOP 50 51 2A

REQUEST FOR LIQUIDATION STATUS

REQUEST FOR "LIQUIDATION" STATUS

Borrower: _____

SBA Loan Number: _____

Date of Loan Approval: _____

Current Principal Balance: _____

Date Interest Paid To: _____

Date of Last Payment: _____

Next Payment Due: _____

Present Payment Amount: _____

CAUSE FOR REQUEST:

BORROWER'S PROPOSAL FOR SOLUTION:

COMMENTS & OUTLINE OF WORKOUT ATTEMPTS:

STATUS OF FORECLOSURE, BANKRUPTCY, OR OTHER LITIGATION, IF APPLICABLE:

1. Bankruptcy Chapter: #

Debtor, if different from borrower:

Date petition filed:

Case Number:

Loan balance as of petition filing date:

Name and telephone number of bank's attorney handling case:

Name and telephone number of bank official for contact:

Attached copy of petition: Yes___ No_____

2. Foreclosures - by your bank

Date foreclosure complaint filed:

Name and telephone number of bank's attorney handling case:

Name and telephone number of bank official for contact:

Attached copy of complaint: Yes___ No_____

3. Foreclosure - by third parties

Date foreclosure complaint filed:

Date bank/SBA/USA served with Summons & Complaint:

Name and telephone number of bank's attorney handling case:

Name and telephone number of bank official for contact:

Attached copy of complaint: Yes___ No_____

4. Guarantors:

Name(s)_____

Social Security #(s)_____

Home Address(s)_____

Home Phone Number(s) _____

Business Phone Number(s) _____

5. LOAN SOLD IN SECONDARY MARKET? Yes ___ No _____

Have you repurchased: Yes ___ No _____

SBA TO HONOR GUARANTY? Yes___ No _____

6. Lender Official handling liquidation:

Name: _____

Title: _____

Name of Lender: _____

Address: _____

Phone No.: _____

Fax No.: _____

Email: _____

**REGULAR 7(a) LOAN
LIQUIDATION LETTER
AND PACKAGE**

REGULAR 7(a) LOAN LIQUIDATION LETTER

Date

Name
Address
City, State

Re: Loan Name
 SBA Loan #

Dear :

It is our understanding a default situation exists which requires that the above referenced loan be classified "in liquidation". As conditions precedent to this classification, the following conditions must be met:

1. Prior to instituting any action, your institution should complete the enclosed Liquidation Plan forms and forward it to SBA within 10 days along with a completed Risk Management Data form.
2. You are required to make an on site visit and prepare a comprehensive and detailed report containing an inventory of assets and an assessment of their condition within 60 days of an unremedied default in payment or as soon as possible after default if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of an event which would cause a loan to be placed in a liquidation status.

The collateral inspection must include a comprehensive inventory and a valuation of the collateral. An itemized list of the personal property must be made, including model and serial numbers if applicable, along with photographs or videotape. Establish individual liquidation values for specific items. Inventory must also be valued. List all personalty having a purchase value in excess of \$500.00.

If any pledged items worth more that \$5,000.00 are missing, or if there is evidence that any pledged property was sold, concealed, or otherwise disposed of with intent to defraud the SBA or lender, a separate report should be made to SBA for referral to the Inspector General.

3. It is imperative that a representative of your institution complete the enclosed Environmental Questionnaire (for all non-residential properties mortgaged), and return same to SBA, along with the Liquidation Plan. A separate questionnaire should be completed for each property.
4. Your institution must agree to coordinate with and obtain the Agency's prior written approval to all major steps involved in this liquidation and any litigation. Included in this coordination and approval, but not limited thereto, are the following:

- (a) Filing suits or cross complaints in the name of your bank (DO NOT NAME SBA AS PARTY TO ANY ACTION WITHOUT WRITTEN CONSENT OF SBA.)
- (b) Making advances or paying expenses on account.
- (c) Protective bids to be entered at any sale of the collateral securing the Note.
- (d) Compromise or settlement.

5. **Please note that, should Litigation arise, a Litigation Plan is required. Please refer to the attached Memorandum from Paul Arrington, District Counsel. You will also be required to provide SBA Counsel with all major pleadings. Litigation matters should be coordinated with SBA Counsel.**

Copies of other pleadings are not required unless you or your attorney believe that SBA needs to be made aware of an event that has occurred in the litigation or when Agency Counsel's opinion regarding the litigation is requested. However, additional pleadings may be required on certain cases.

The maturity date of the Note should be accelerated and notice thereof with demand for immediate payment should be made on the borrower. Copies thereof should be furnished this office.

An appraisal of the collateral must be obtained and a copy thereof furnished the Agency for anticipated bid purposes.

Please execute the "Agreement" on page 4 and return with a copy of this letter.

Please be advised that we have classified this loan "in liquidation". Until otherwise advised, please indicate this classification on your monthly report to Colson, for (1502). If you have other loans which require such a classification, and which you are still servicing, please advise us.

SBA is to be furnished a list of the collateral securing separate and direct loans with borrower, with a statement as to the bank's security interest position. This is to determine application of recoveries, including proceeds from sale, summary or judicial.

The lender is to comply with the requirements of SBA SOP 50-51-2, Loan Liquidation & Acquired Property. A copy of this SOP can be downloaded from the SBA website at <http://www.yes.sba.gov/> or at <http://propshop.psc.gov>.

SBA cannot consider purchase of the guaranty until we receive a written demand from the lender and certain liquidation requirements have been met.

For further assistance and information, please call me at (904) 443-19____.

Sincerely,

Name
Loan Specialist, PMD

Enclosures: Agreement
Liquidation Plan
Risk Management Form
Environmental Questionnaire
Litigation Memorandum
Wrap Up Report

AGREEMENT

LOAN NAME: _____

LOAN NUMBER: _____

The undersigned agrees to the above cited conditions precedent to the retention of servicing this loan and liquidation of the collateral.

ATTEST:

By: _____
(Name)

(Title)

BANK'S SEAL

Date: _____

Phone: _____

Loan Name: _____

Date: _____

Loan #: _____

Action #: _____

LENDER LIQUIDATION PLAN FORMAT

- 1. Justification for transfer to "liquidation" status:** (e.g., Non-Payment, Bankruptcy [attach 341 Notice - Meeting of Creditors], Property Abandoned, 3rd Party Litigation/Foreclosure by Prior Lienholder, Business Closed, other)

- 2. Cause of business breakdown & workout attempts:** Include comments on management assistance offered and/or given, and attach copy of the most recent field visit report or memo. SBA requires that a field visit be made to the borrower's premises **and the site of any other worthwhile collateral** within 60 days of unremedied default in payment or as soon as possible if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of any event which causes a loan to be placed into liquidation status.

- 3. Describe any "non-SBA" loans lender has with any borrower, guarantor or principal:** If none, so state. If yes, please attach copies of loan documentation (e.g., Note, Security Agreement, UCC filings, Deed of Trust, Mortgage, etc.) and a proposal as to how you will allocate and share expenses and funds recovered.

4. **List name, address, phone#, SSN and Tax ID# for all obligors and guarantors:** Include copies of demand letters if sent, and whether life insurance is still in force if it was required.

5. **List name, address, phone number and estimate of fees of lender's counsel if attorney fees will be paid:** Include the hourly rate, estimated number of hours and a brief description of services to be provided.

- 6. General Recovery Plan:** Briefly describe the proposed liquidation process and the estimated time. Discuss actions to be taken to dispose of all collateral (e.g., voluntary sale, abandonment, judicial or nonjudicial foreclosure, public auction, compromise settlement, deed in lieu, etc.). It is important to comment on any potential environmental/toxic concerns, whether hazard insurance is in effect or if purchase of insurance is recommended, and if there are any significant items of collateral missing. If it appears the liquidation value of all collateral is insufficient to fully repay the loan, include discussion of what other options are considered feasible compared with the estimated costs to pursue (e.g., litigation against guarantors). SBA procedures require that business assets be liquidated first and compromise alternatives be explored, if feasible, prior to foreclosure against a personal residence.

7. Estimate of Liquidation Recovery: Fill in actual or estimated expenses as applicable:

	Real Estate	Real Estate	Personal Prop.	Personal Prop.
Original Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Liquidation Value/Estimate	\$ _____	\$ _____	\$ _____	\$ _____
<u>Less senior liens/taxes:</u>				
1st: _____	\$ _____	\$ _____	\$ _____	\$ _____
2nd: _____	\$ _____	\$ _____	\$ _____	\$ _____
3rd: _____	\$ _____	\$ _____	\$ _____	\$ _____
Estimated net value:	\$ _____	\$ _____	\$ _____	\$ _____
Expense Category				
Real Estate Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Personal Property Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Environmental Reports (i.e., Phase 1 or 2)	\$ _____	\$ _____	\$ _____	\$ _____
Insurance Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Legal Fees	\$ _____	\$ _____	\$ _____	\$ _____
Care & Preservation of Collateral	\$ _____	\$ _____	\$ _____	\$ _____
Escrow/Commissions	\$ _____	\$ _____	\$ _____	\$ _____
Storage/Pickup/Asset Marshalling	\$ _____	\$ _____	\$ _____	\$ _____
Trustee Foreclosure (if applicable)	\$ _____	\$ _____	\$ _____	\$ _____
Auction/Sale Expenses	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Projected recovery after expenses:	\$ _____	\$ _____	\$ _____	\$ _____

Note: Attach copies of prior/current real and personal property appraisal summaries, copies of the field visit report/memo, and the executive summary of any environmental reports.

FOR SBA USE ONLY

LOAN OFFICER REVIEW AND RECOMMENDATIONS:

COUNSEL'S REVIEW AND COMMENTS:

SUPERVISOR'S REVIEW AND APPROVAL/DECLINE OF PLAN:

RISK MANAGEMENT DATA

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY

SECTION 1 THRU 3 ONLY - IF INFORMATION IS NOT AVAILABLE, ENTER "0"
(ZERO) IN THE APPROPRIATE SPACE

LOAN NAME: _____

1. Current History Indicator: (A, B, C)

Note: Use "A" if the credit rating is acceptable based on the normal credit review process; use "B" if the firm's credit rating is marginal; and use "C" if the company is a new business with no credit history.

2. Complete the following section only if the business has been in operation prior to the loan application. This section is for historical information only.

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

3. The following ratios and percentages are compiled from the balance sheet after the loan proceeds have been factored in (this section is used for start-up businesses and for projected data).

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

Is this a real estate loan? Yes _____ No _____

Is this a piggyback loan? Yes _____ No _____

If Yes, is same lender involved? Yes _____ No _____

Is this a change of ownership? Yes _____ No _____

4. This section is to be completed only when the loan is transferred into liquidation

NET REALIZABLE VALUE AT DEFAULT

Note: The net realizable value of loan collateral is the total recovery that can reasonably be expected from the sale of an asset. You should start with the liquidation values for loan collateral (as described on Page 5 of Notice 5000-524 "Loan to Valuation - Liquidation"), or other values that can be clearly supported by loan documentation. Outstanding senior liens should then be deducted along with any taxes owed. Next, subtract anticipated sales costs plus expenses that will be incurred for care and preservation of the asset during the sale process.

M & E	\$ _____
F & F (Leasehold Improvements)	\$ _____
Inventory	\$ _____
Accounts Receivable	\$ _____
Commercial Real Estate	\$ _____
Residential Real Estate	\$ _____
Other	\$ _____

ENVIRONMENTAL QUESTIONNAIRE

INSTRUCTIONS: Use the following as a guide to determine if a Phase I or Phase II audit is needed. The lender is to complete it during an on-site inspection when commercial real estate is to be taken as collateral. Residential real estate is excluded.

1. Determine the prior, current and planned uses for the property. If any of these involve operations that used or use toxic chemical, require a Phase I audit.
2. To the extent possible, determine the prior, current and planned uses of all adjoining property. If any of these involve operations that used or use toxic chemicals, require a Phase I audit.
3. Conduct a visual inspection of the facility, preferably accompanied by the current owners. The following observations may trigger the need for a Phase I audit:
 - any evidence that chemicals are used in the operation of the facility.
 - discarded chemical containers.
 - waste piles of any type (ask about buried waste and the presence of underground storage tanks).
 - evidence of distressed vegetation of non-vegetative areas.
 - oily films on standing water
 - discolored soils
 - unusual odors.
4. Determine that all relevant environmental permits and/or notifications are in place. If not, require a Phase I audit. (Consult local regulatory authorities about requirements.)
5. Determine whether the facility has ever been involved in:
 - any citations, claims or complaints regarding environmental problems.
 - any notice of violations.
 - any environmental clean-up actions.

Effective 12-01-97

PAGE 2 - ENVIRONMENTAL QUESTIONNAIRE

LENDER OR SBA Report on Issues Covered by This Questionnaire:

Recommendation:

Acknowledgment By the Applicant:

I acknowledge that I have read this questionnaire and have responded to the issues and questions posed therein to the best of my knowledge.

Corporation: _____
Business Name

By: _____
Name & Title

(Other): _____
Business Name

By: _____
Name & Title

-M-E-M-O-R-A-N-D-U-M-

TO: SBA Lenders

**FROM: Paul Arrington, District Counsel
SBA North Florida District Office**

SUBJECT: Lender-Serviced Litigation

Whenever there is or will be litigation involving an SBA guaranteed loan, the lender **MUST** provide SBA with a narrative prepared by lender's counsel prior to taking any (or any additional) legal action **when any of the following apply:**

A party disputes the validity of the lender's claim(s) or lien(s);

Attorney's fees and legal costs are estimated to exceed \$5,000.00;

The lender has another outstanding loan to the borrower(s) or to any guarantor(s); or

There is any other potential conflict of interest between the lender and SBA with respect to the borrower(s) or the guarantor(s).

If none of the above conditions exist, then a pre-litigation narrative from counsel is not required; however, you should identify lender's counsel, discuss counsel's hourly rate and estimated number of hours and describe the services to be provided as part of your liquidation plan. When required, the narrative serves the purpose of setting forth the scope of legal work to be performed and the cost of each anticipated action. Counsel's narrative **MUST** address the following:

Strategy, including what expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion or by trial;

Information regarding all non-SBA debts owed by the borrower, its owners and guarantors to the lender, including the original amount of the obligation, current balance and current status;

Estimate of the recovery;

Risk of adverse precedent;

Actual or potential conflicts of interest;

Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;

Settlement alternatives;

Estimated timetable;

Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA; and

A cost budget. The budget should contain a fair estimate of the total cost of the litigation and the method of billing, i.e. hourly rate, flat fee or contingency fee. The budget should include associate and paralegal time as well as secretarial overtime (if it will be billed). Costs should also be itemized including but not limited to court costs, service of process, lien searches, photocopying and deposition transcripts.

You may submit counsel's narrative, when required, as a supplemental document to your liquidation plan.

FINAL WRAP UP REPORT

Borrower's Name: _____ SBA Loan Number: _____

1. Provide a narrative explaining how and when collateral was liquidated. Include a complete accounting of all disbursements and collections during the liquidation process to show the gross recoveries and the net amount applied on the loan. Attach an additional page if necessary. SBA reserves the right to request copies of invoices.

2. Identify remaining collateral: _____ Has it been abandoned? _____ Justification: _____ If remaining collateral includes a lien on personal residence, explain attempts to compromise the debt.: _____

3. Identify obligors that remain legally liable for the remaining deficiency balance and provide their most recent address: _____

Provide a summary of their financial condition along with an estimate of collectibility and **explain efforts by the bank to obtain a compromise settlement offer from each obligors:** _____

_____ Note: The purpose of gathering this information on loan principals is to enable SBA to make its mandatory update for each individual involved in the loan. This data is needed for post charge off activities conducted by SBA which may include: a) referral to DOJ Central Intake Facility for litigation, b) referral to private collection agencies for continued collection activities, c) referral to IRS and Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to IRS as income, f) reporting to Credit Bureaus, or g) inclusion on the federal debarment register.

4. Identify obligors that are no longer liable and the basis for their release (bankruptcy, compromise, etc.):

5. Attorney fees claimed for bankruptcy cases or other litigation? ____yes ____no. If yes, please provide copies of the legal documents identified in the required attachments below.

Required Attachments:

- Copies of site visit reports
- Copy of Lender Liquidation Plan
- Copy of completed Risk Management Data Form
- Copies of demand letters sent to each obligor
- Legal: Copies of Bankruptcy Notices and any **Bankruptcy Discharges**
Copies of Complaints, Pleadings/Motions, Court Orders
Documentation to support attorney fees

**LOWDOC LOAN (OVER \$50,000)
LIQUIDATION LETTER
AND PACKAGE**

LOWDOC LOAN – OVER \$50,000 LIQUIDATION LETTER

Date

Name
Bank
Address
City, State, ZIP

Re: Loan Name:
 SBA Loan #

Dear:

It is our understanding that a situation exists which requires the subject loan to be classified as "In Liquidation" status. Since this loan was approved under the "LowDoc" program, and the principal balance is more than \$50,000.00, the following conditions must be met:

1. Prior to instituting any action, your institution should complete the enclosed Liquidation Plan forms and forward to SBA within 10 days from the above date along with this Agreement for SBA's approval **and your "Risk Management" Form.**
2. You are required to make an on site visit and prepare a comprehensive and detailed report containing an inventory of assets and an assessment of their condition within 60 days of an unremedied default in payment or as soon as possible after default if there are assets of significant value that could be removed or depleted. Whether a payment default exists, a site visit **must** be conducted within fifteen (15) days of an event which would cause a loan to be placed into liquidation status.

The collateral inspection must include a comprehensive inventory and a valuation of the collateral. An itemized list of the personal property must be made, including model and serial numbers if applicable, along with photographs or videotape. Establish individual liquidation values for specific items. Inventory must also be valued. List all personalty having a purchase value in excess of \$500.00.

If any pledged items worth more than \$5,000.00 are missing, or if there is evidence that any pledged property was sold, concealed, or otherwise disposed of with intent to defraud the SBA or lender, a separate report should be made to SBA for referral to the Inspector General.

3. It is imperative that a representative of your institution complete the enclosed Environmental Questionnaire (for all non-residential properties mortgaged), and return same to SBA, along with the Liquidation Plan. A separate questionnaire should be completed for each non-residential property.
4. Your institution must agree to coordinate with and obtain the Agency's prior written approval to all major steps involved in this liquidation and any litigation. Included in this coordination and approval, but not limited thereto, are the following:

- (a) Liquidation procedures to be used, including a written estimate to attorney's fees from your attorney, appraisal fees, etc.
- (b) Filing suits or cross complaints in the name of your bank (DO NOT NAME SBA AS PARTY TO ANY ACTION WITHOUT WRITTEN CONSENT OF SBA).
- (c) Making advances or paying expenses on account.
- (d) Protective bids to be entered at any sale of the collateral securing the Note.
- (e) Compromise or settlement.
- (f) The lender must obtain prior written consent from SBA before taking title to, possession of, managing, moving or storing collateral that is contaminated or contains any type of hazardous waste. In addition, should any portion of the collateral be so reduced in value (by contamination, vandalism, fire, etc.) as to make liquidation unfeasible, the lender must obtain SBA consent to abandon the collateral.

Copies of the following pleadings must be forwarded to the assigned SBA Loan Specialist within 10 workdays of their filing or service upon your attorney or other representative:

- Complaint filed on behalf of the bank commencing any type of litigation, along with any answers that may be filed.
- Final Judgment or Summary Final Judgment.
- Third-party complaint and bank's answer.
- Order for Relief commencing a bankruptcy proceeding.
- Order lifting Stay and/or for Adequate Protection.
- Order confirming a bankruptcy plan (Chapters 11, 12, and 13).
- Discharge of Debtor(s) entered in a Chapter 7 bankruptcy proceeding.
- Order dismissing a bankruptcy case.
- Any pleading that changes the type of litigation (e.g., bank's complaint for action against guarantors or a third-party complaint).

Copies of other pleadings are not required unless you or your attorney believes that SBA needs to be made aware of an event that has occurred in the litigation or when Agency Counsel's opinion regarding the litigation is requested. However, additional pleadings may be required on certain cases.

The maturity date of the Note should be accelerated and notice thereof with demand for immediate payment should be made on the borrower. Copies thereof should be furnished this office.

An appraisal of the collateral must be obtained and a copy thereof furnished the Agency for anticipated bid purposes.

Please execute the "Agreement" on Page 5 and return immediately.

Please be advised that we have classified the above referenced loan as "In Liquidation". Until otherwise advised, please indicate this classification on your monthly report, SBA Form 1502, to Colson Services. If you have other loans which require such a classification, and which you are still servicing, please advise us.

SBA is to be furnished a list of the collateral securing separate and direct loans with borrower, with a statement as to the bank's security interest position. This is to determine the application of recoveries, including proceeds from sale, summary or judicial.

Since this is a "LowDoc" loan, purchase of SBA's share of the guaranty may occur once the loan has been liquidated **and you have made written demand to SBA**. Separate purchase instructions will follow at that time.

In addition, every 90 days the lender shall provide SBA with a written summary giving the status of the liquidation, the status of any litigation, a summary of recoveries and expenses incurred to date, along with an estimated time to complete the liquidation.

Please be advised that, if liquidation expenses exceed recoveries, SBA will not reimburse the bank for the excess expenses. In addition, purchase of accrued interest is limited to 120 days. **All liquidation recoveries are to be applied to the principal balance of the loan, in inverse order of maturity.**

After liquidation of all collateral, the lender shall solicit workouts or compromise on the deficiency from all obligors or, if feasible, obtain judgments against same, which shall be assigned to SBA at time of purchase. If a judgment is not feasible then, after solicitation of workout or compromise, the lender will, as part of the purchase package, provide a recommendation not to pursue the obligors and provide an analysis of their repayment ability, along with copies of credit reports, any financial information obtained, copies of workout and/or compromise solicitation letters. The Note and guaranties will be assigned to SBA at time of purchase.

All actions by the lender are to comply with Standard Operating Procedure 50-51-2, Loan Liquidation & Acquired Property, a copy of which is available from this office upon request.

All proposed compromise or workout offers will be forwarded to the Agency along with the lender's recommendation, supported by copies of financial information, credit reports, etc.

For further assistance and information, please call..

Sincerely,

Name
Loan Specialist
Portfolio Management Division
(904)443-19____

Enclosures: Agreement
 Liquidation Plan
 Risk Management Form
 Environmental Questionnaire
 Litigation Memorandum
 Wrap Up Report

AGREEMENT

LOAN NAME: _____

LOAN NUMBER: _____

The undersigned agrees to the above cited conditions precedent to the retention of servicing this loan and liquidation of the collateral.

ATTEST:

By: _____
(Name)

(Title)

BANK'S SEAL

Date: _____

Phone: _____

Loan Name: _____

Date: _____

Loan #: _____

Action #: _____

LENDER LIQUIDATION PLAN FORMAT

8. **Justification for transfer to "liquidation" status:** (e.g., Non-Payment, Bankruptcy [attach 341 Notice - Meeting of Creditors], Property Abandoned, 3rd Party Litigation/Foreclosure by Prior Lienholder, Business Closed, other)

9. **Cause of business breakdown & workout attempts:** Include comments on management assistance offered and/or given, and attach copy of the most recent field visit report or memo. SBA requires that a field visit be made to the borrower's premises **and the site of any other worthwhile collateral** within 60 days of unremedied default in payment or as soon as possible if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of any event which causes a loan to be placed into liquidation status.

10. **Describe any "non-SBA" loans lender has with any borrower, guarantor or principal:** If none, so state. If yes, please attach copies of loan documentation (e.g., Note, Security Agreement, UCC filings, Deed of Trust, Mortgage, etc.) and a proposal as to how you will allocate and share expenses and funds recovered.

11. List name, address, phone#, SSN and Tax ID# for all obligors and guarantors: Include copies of demand letters if sent, and whether life insurance is still in force if it was required.

12. List name, address, phone number and estimate of fees of lender's counsel if attorney fees will be paid: Include the hourly rate, estimated number of hours and a brief description of services to be provided.

13. General Recovery Plan: Briefly describe the proposed liquidation process and the estimated time. Discuss actions to be taken to dispose of all collateral (e.g., voluntary sale, abandonment, judicial or nonjudicial foreclosure, public auction, compromise settlement, deed in lieu, etc.). It is important to comment on any potential environmental/toxic concerns, whether hazard insurance is in effect or if purchase of insurance is recommended, and if there are any significant items of collateral missing. If it appears the liquidation value of all collateral is insufficient to fully repay the loan, include discussion of what other options are considered feasible compared with the estimated costs to pursue (e.g., litigation against guarantors). SBA procedures require that business assets be liquidated first and compromise alternatives be explored, if feasible, prior to foreclosure against a personal residence.

14. Estimate of Liquidation Recovery: Fill in actual or estimated expenses as applicable:

	Real Estate	Real Estate	Personal Prop.	Personal Prop.
Original Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Liquidation Value/Estimate	\$ _____	\$ _____	\$ _____	\$ _____
<u>Less senior liens/taxes:</u>				
1st: _____	\$ _____	\$ _____	\$ _____	\$ _____
2nd: _____	\$ _____	\$ _____	\$ _____	\$ _____
3rd: _____	\$ _____	\$ _____	\$ _____	\$ _____
Estimated net value:	\$ _____	\$ _____	\$ _____	\$ _____
Expense Category				
Real Estate Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Personal Property Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Environmental Reports (i.e., Phase 1 or 2)	\$ _____	\$ _____	\$ _____	\$ _____
Insurance Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Legal Fees	\$ _____	\$ _____	\$ _____	\$ _____
Care & Preservation of Collateral	\$ _____	\$ _____	\$ _____	\$ _____
Escrow/Commissions	\$ _____	\$ _____	\$ _____	\$ _____
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Trustee Foreclosure (if applicable)	\$ _____	\$ _____	\$ _____	\$ _____
Auction/Sale Expenses	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Projected recovery after expenses:	\$ _____	\$ _____	\$ _____	\$ _____

Note: Attach copies of prior/current real and personal property appraisal summaries, copies of the field visit report/memo, and the executive summary of any environmental reports.

FOR SBA USE ONLY

LOAN OFFICER REVIEW AND RECOMMENDATIONS:

COUNSEL'S REVIEW AND COMMENTS:

SUPERVISOR'S REVIEW AND APPROVAL/DECLINE OF PLAN:

RISK MANAGEMENT DATA

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY

SECTION 1 THRU 3 ONLY - IF INFORMATION IS NOT AVAILABLE, ENTER "0"
(ZERO) IN THE APPROPRIATE SPACE

LOAN NAME: _____

5. Current History Indicator: (A, B, C)

Note: Use "A" if the credit rating is acceptable based on the normal credit review process; use "B" if the firm's credit rating is marginal; and use "C" if the company is a new business with no credit history.

6. Complete the following section only if the business has been in operation prior to the loan application. This section is for historical information only.

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

7. The following ratios and percentages are compiled from the balance sheet after the loan proceeds have been factored in (this section is used for start-up businesses and for projected data).

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

Is this a real estate loan? Yes _____ No _____

Is this a piggyback loan? Yes _____ No _____

If Yes, is same lender involved? Yes _____ No _____

Is this a change of ownership? Yes _____ No _____

8. This section is to be completed only when the loan is transferred into liquidation

NET REALIZABLE VALUE AT DEFAULT

Note: The net realizable value of loan collateral is the total recovery that can reasonably be expected from the sale of an asset. You should start with the liquidation values for loan collateral (as described on Page 5 of Notice 5000-524 "Loan to Valuation - Liquidation"), or other values that can be clearly supported by loan documentation. Outstanding senior liens should then be deducted along with any taxes owed. Next, subtract anticipated sales costs plus expenses that will be incurred for care and preservation of the asset during the sale process.

M & E	\$ _____
F & F (Leasehold Improvements)	\$ _____
Inventory	\$ _____
Accounts Receivable	\$ _____
Commercial Real Estate	\$ _____
Residential Real Estate	\$ _____
Other	\$ _____

ENVIRONMENTAL QUESTIONNAIRE

INSTRUCTIONS: Use the following as a guide to determine if a Phase I or Phase II audit is needed. The lender is to complete it during an on-site inspection when commercial real estate is to be taken as collateral. Residential real estate is excluded.

4. Determine the prior, current and planned uses for the property. If any of these involve operations that used or use toxic chemical, require a Phase I audit.
5. To the extent possible, determine the prior, current and planned uses of all adjoining property. If any of these involve operations that used or use toxic chemicals, require a Phase I audit.
6. Conduct a visual inspection of the facility, preferably accompanied by the current owners. The following observations may trigger the need for a Phase I audit:
 - any evidence that chemicals are used in the operation of the facility.
 - discarded chemical containers.
 - waste piles of any type (ask about buried waste and the presence of underground storage tanks).
 - evidence of distressed vegetation of non-vegetative areas.
 - oily films on standing water
 - discolored soils
 - unusual odors.
6. Determine that all relevant environmental permits and/or notifications are in place. If not, require a Phase I audit. (Consult local regulatory authorities about requirements.)
7. Determine whether the facility has ever been involved in:
 - any citations, claims or complaints regarding environmental problems.
 - any notice of violations.
 - any environmental clean-up actions.

PAGE 2 - ENVIRONMENTAL QUESTIONNAIRE

LENDER OR SBA Report on Issues Covered by This Questionnaire:

Recommendation:

Acknowledgment By the Applicant:

I acknowledge that I have read this questionnaire and have responded to the issues and questions posed therein to the best of my knowledge.

Corporation: _____
Business Name

By: _____
Name & Title

(Other): _____
Business Name

By: _____
Name & Title

-M-E-M-O-R-A-N-D-U-M-

TO: SBA Lenders

**FROM: Paul Arrington, District Counsel
SBA North Florida District Office**

SUBJECT: Lender-Serviced Litigation

Whenever there is or will be litigation involving an SBA guaranteed loan, the lender **MUST** provide SBA with a narrative prepared by lender's counsel prior to taking any (or any additional) legal action **when any of the following apply:**

A party disputes the validity of the lender's claim(s) or lien(s);

Attorney's fees and legal costs are estimated to exceed \$5,000.00;

The lender has another outstanding loan to the borrower(s) or to any guarantor(s); or

There is any other potential conflict of interest between the lender and SBA with respect to the borrower(s) or the guarantor(s).

If none of the above conditions exist, then a pre-litigation narrative from counsel is not required; however, you should identify lender's counsel, discuss counsel's hourly rate and estimated number of hours and describe the services to be provided as part of your liquidation plan. When required, the narrative serves the purpose of setting forth the scope of legal work to be performed and the cost of each anticipated action. Counsel's narrative **MUST** address the following:

Strategy, including what expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion or by trial;

Information regarding all non-SBA debts owed by the borrower, its owners and guarantors to the lender, including the original amount of the obligation, current balance and current status;

Estimate of the recovery;

Risk of adverse precedent;

Actual or potential conflicts of interest;

Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;

Settlement alternatives;

Estimated timetable;

Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA; and

A cost budget. The budget should contain a fair estimate of the total cost of the litigation and the method of billing, i.e. hourly rate, flat fee or contingency fee. The budget should include associate and paralegal time as well as secretarial overtime (if it will be billed). Costs should also be itemized including but not limited to court costs, service of process, lien searches, photocopying and deposition transcripts.

You may submit counsel's narrative, when required, as a supplemental document to your liquidation plan.

FINAL WRAP UP REPORT

Borrower's Name: _____ SBA Loan Number: _____

6. Provide a narrative explaining how and when collateral was liquidated. Include a complete accounting of all disbursements and collections during the liquidation process to show the gross recoveries and the net amount applied on the loan. Attach an additional page if necessary. SBA reserves the right to request copies of invoices.

7. Identify remaining collateral: _____ Has it been abandoned? _____ Justification: _____ If remaining collateral includes a lien on personal residence, explain attempts to compromise the debt.: _____

8. Identify obligors that remain legally liable for the remaining deficiency balance and provide their most recent address: _____

Provide a summary of their financial condition along with an estimate of collectibility and **explain efforts by the bank to obtain a compromise settlement offer from each obligors:** _____

_____ Note: The purpose of gathering this information on loan principals is to enable SBA to make its mandatory update for each individual involved in the loan. This data is needed for post charge off activities conducted by SBA which may include: a) referral to DOJ Central Intake Facility for litigation, b) referral to private collection agencies for continued collection activities, c) referral to IRS and Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to IRS as income, f) reporting to Credit Bureaus, or g) inclusion on the federal debarment register.

9. Identify obligors that are no longer liable and the basis for their release (bankruptcy, compromise, etc.):

10. Attorney fees claimed for bankruptcy cases or other litigation? ____yes ____no. If yes, please provide copies of the legal documents identified in the required attachments below.

Required Attachments:

- Copies of site visit reports
- Copy of Lender Liquidation Plan
- Copy of completed Risk Management Data Form
- Copies of demand letters sent to each obligor
- Legal: Copies of Bankruptcy Notices and any **Bankruptcy Discharges**
Copies of Complaints, Pleadings/Motions, Court Orders
Documentation to support attorney fees

**LOWDOC LOAN (UNDER \$50,000)
LIQUIDATION LETTER
AND PACKAGE**

LOWDOC LOAN – UNDER \$50,000 LIQUIDATION LETTER

Date

Name

Bank

Address

City, State, ZIP

Re: Loan Name:
 SBA Loan #:

Dear:

It is our understanding that a situation exists which requires the subject loan to be classified as "In Liquidation" status. As this loan was approved under the "LowDoc" program, and the principal balance is under \$50,000.00, the following conditions must be met:

1. Prior to instituting any action, your institution should complete the enclosed Liquidation Plan forms and sign the liquidation agreement. Immediately forward the liquidation agreement to SBA. **At the time you make written demand to SBA to purchase the guaranty, you will forward the liquidation plan, and your Risk Management Form.**
2. You are required to make an on site visit and prepare a comprehensive and detailed report containing an inventory of assets and an assessment of their condition within 60 days of an unremedied default in payment or as soon as possible after default if there are assets of significant value that could be removed or depleted. When a payment default exists, a site visit **must** be conducted within fifteen (15) days of an event which would cause a loan to be placed into liquidation status.

The collateral inspection must include a comprehensive inventory and a valuation of the collateral. An itemized list of the personal property must be made, including model and serial numbers if applicable, along with photographs or videotape. Establish individual liquidation values for specific items. Inventory must also be valued. List all personalty having a purchase value in excess of \$500.00.

If any pledged items worth more than \$5,000.00 are missing, or if there is evidence that any pledged property was sold, concealed, or otherwise disposed of with intent to defraud the SBA or lender, a separate report should be made to SBA for referral to the Inspector General.

3. It is imperative that a representative of your institution complete the enclosed Environmental Questionnaire (for all non-residential properties mortgaged), and, if an environmental problem is indicated, the lender shall obtain a Phase I environmental

audit if acquisition of title is anticipated. A separate questionnaire should be completed for each non-residential property. **The lender must obtain prior written consent from SBA before taking title to, possession of, managing, moving or storing collateral that is contaminated or contains any type of hazardous waste.**

4. **Please note, that, should Litigation arise, a Litigation Plan is required. Please refer to the attached Memorandum from Paul Arrington, District Counsel. You will also be required to provide SBA Counsel with all major pleadings. Litigation matters should be coordinated with SBA Counsel.**

The maturity date of the Note should be accelerated and notice thereof with demand for immediate payment should be made on the borrower. Copies thereof should be furnished this office at time of guaranty purchase.

Please execute the "Agreement" enclosed and return immediately.

Please be advised that we have classified the above referenced loan as "In Liquidation". Until otherwise advised, please indicate this classification on your monthly report, SBA Form 1502, to Colson Services. If you have other loans which require such a classification, and which you are still servicing, please advise us.

SBA is to be furnished a list of the collateral securing separate and direct loans with borrower, with a statement as to the bank's security interest position. This is to determine application of recoveries, including proceeds from sale, summary or judicial.

Since this is a "LowDoc" loan, purchase of SBA's share of the deficiency may occur once the loan has been liquidated and you make written demand to SBA. Separate purchase instructions will follow at that time.

In addition, every 90 days the lender shall provide SBA with a written summary giving the status of the liquidation, the status of any litigation, a summary of recoveries and expenses incurred to date, along with an estimated time to complete the liquidation.

Please be advised that, if liquidation expenses exceed recoveries, SBA will not reimburse the bank for the excess expenses. In addition, purchase of accrued interest is limited to 120 days. **All liquidation recoveries are to be applied to the principal balance of the loan, in inverse order of maturity.**

After liquidation of all collateral, the lender shall solicit workouts or compromise on the deficiency from all obligors or, if feasible, obtain judgements against same, which shall be assigned to SBA at time of purchase. If a judgment is not feasible then, after solicitation of workout or compromise, the lender will, as part of the purchase package, provide a recommendation not to pursue the obligors and provide an analysis of their repayment ability, along with copies of credit reports, any financial information obtained, copies of workout and/or compromise solicitation letters. The Note and guaranties will be assigned to SBA at time of purchase.

All proposed compromise or workout offers will be forwarded to the Agency along with the lender's recommendation, supported by copies of financial information, credit reports, etc.

All actions by the lender must comply with the Standard Operating Procedure 50-51-2, Loan Liquidation & Acquired Property, a copy of which is available from this office upon request.

For further assistance and information, please contact ...

Sincerely,

Name
Loan Specialist
Portfolio Management Division
904/443-19__

Enclosures: Agreement
 Liquidation Plan
 Risk Management Form
 Environmental Questionnaire
 Litigation Memorandum
 Wrap Up Report

AGREEMENT

LOAN NAME: _____

LOAN NUMBER: _____

The undersigned agrees to the above cited conditions precedent to the retention of servicing this loan and liquidation of the collateral.

ATTEST:

By: _____
(Name)

(Title)

BANK'S SEAL

Date: _____

Phone: _____

Loan Name: _____

Date: _____

Loan #: _____

Action #: _____

LENDER LIQUIDATION PLAN FORMAT

15. Justification for transfer to "liquidation" status: (e.g., Non-Payment, Bankruptcy [attach 341 Notice - Meeting of Creditors], Property Abandoned, 3rd Party Litigation/Foreclosure by Prior Lienholder, Business Closed, other)

16. Cause of business breakdown & workout attempts: Include comments on management assistance offered and/or given, and attach copy of the most recent field visit report or memo. SBA requires that a field visit be made to the borrower's premises **and the site of any other worthwhile collateral** within 60 days of unremedied default in payment or as soon as possible if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of any event which causes a loan to be placed into liquidation status.

17. Describe any "non-SBA" loans lender has with any borrower, guarantor or principal: If none, so state. If yes, please attach copies of loan documentation (e.g., Note, Security Agreement, UCC filings, Deed of Trust, Mortgage, etc.) and a proposal as to how you will allocate and share expenses and funds recovered.

18. List name, address, phone#, SSN and Tax ID# for all obligors and guarantors: Include copies of demand letters if sent, and whether life insurance is still in force if it was required.

19. List name, address, phone number and estimate of fees of lender's counsel if attorney fees will be paid: Include the hourly rate, estimated number of hours and a brief description of services to be provided.

20. General Recovery Plan: Briefly describe the proposed liquidation process and the estimated time. Discuss actions to be taken to dispose of all collateral (e.g., voluntary sale, abandonment, judicial or nonjudicial foreclosure, public auction, compromise settlement, deed in lieu, etc.). It is important to comment on any potential environmental/toxic concerns, whether hazard insurance is in effect or if purchase of insurance is recommended, and if there are any significant items of collateral missing. If it appears the liquidation value of all collateral is insufficient to fully repay the loan, include discussion of what other options are considered feasible compared with the estimated costs to pursue (e.g., litigation against guarantors). SBA procedures require that business assets be liquidated first and compromise alternatives be explored, if feasible, prior to foreclosure against a personal residence.

21. Estimate of Liquidation Recovery: Fill in actual or estimated expenses as applicable:

	Real Estate	Real Estate	Personal Prop.	Personal Prop.
Original Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Liquidation Value/Estimate	\$ _____	\$ _____	\$ _____	\$ _____
<u>Less senior liens/taxes:</u>				
1st: _____	\$ _____	\$ _____	\$ _____	\$ _____
2nd: _____	\$ _____	\$ _____	\$ _____	\$ _____
3rd: _____	\$ _____	\$ _____	\$ _____	\$ _____
Estimated net value:	\$ _____	\$ _____	\$ _____	\$ _____
Expense Category				
Real Estate Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Personal Property Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Environmental Reports (i.e., Phase 1 or 2)	\$ _____	\$ _____	\$ _____	\$ _____
Insurance Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Legal Fees	\$ _____	\$ _____	\$ _____	\$ _____
Care & Preservation of Collateral	\$ _____	\$ _____	\$ _____	\$ _____
Escrow/Commissions	\$ _____	\$ _____	\$ _____	\$ _____
Storage/Pickup/Asset Marshalling	\$ _____	\$ _____	\$ _____	\$ _____
Trustee Foreclosure (if applicable)	\$ _____	\$ _____	\$ _____	\$ _____
Auction/Sale Expenses	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Projected recovery after expenses:	\$ _____	\$ _____	\$ _____	\$ _____

Note: Attach copies of prior/current real and personal property appraisal summaries, copies of the field visit report/memo, and the executive summary of any environmental reports.

FOR SBA USE ONLY

LOAN OFFICER REVIEW AND RECOMMENDATIONS:

COUNSEL'S REVIEW AND COMMENTS:

SUPERVISOR'S REVIEW AND APPROVAL/DECLINE OF PLAN:

RISK MANAGEMENT DATA

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY

SECTION 1 THRU 3 ONLY - IF INFORMATION IS NOT AVAILABLE, ENTER "0"
(ZERO) IN THE APPROPRIATE SPACE

LOAN NAME: _____

9. Current History Indicator: (A, B, C)

Note: Use "A" if the credit rating is acceptable based on the normal credit review process; use "B" if the firm's credit rating is marginal; and use "C" if the company is a new business with no credit history.

10. Complete the following section only if the business has been in operation prior to the loan application. This section is for historical information only.

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

11. The following ratios and percentages are compiled from the balance sheet after the loan proceeds have been factored in (this section is used for start-up businesses and for projected data).

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

Is this a real estate loan? Yes _____ No _____

Is this a piggyback loan? Yes _____ No _____

If Yes, is same lender involved? Yes _____ No _____

Is this a change of ownership? Yes _____ No _____

12. This section is to be completed only when the loan is transferred into liquidation

NET REALIZABLE VALUE AT DEFAULT

Note: The net realizable value of loan collateral is the total recovery that can reasonably be expected from the sale of an asset. You should start with the liquidation values for loan collateral (as described on Page 5 of Notice 5000-524 "Loan to Valuation - Liquidation"), or other values that can be clearly supported by loan documentation. Outstanding senior liens should then be deducted along with any taxes owed. Next, subtract anticipated sales costs plus expenses that will be incurred for care and preservation of the asset during the sale process.

M & E	\$ _____
F & F (Leasehold Improvements)	\$ _____
Inventory	\$ _____
Accounts Receivable	\$ _____
Commercial Real Estate	\$ _____
Residential Real Estate	\$ _____
Other	\$ _____

ENVIRONMENTAL QUESTIONNAIRE

INSTRUCTIONS: Use the following as a guide to determine if a Phase I or Phase II audit is needed. The lender is to complete it during an on-site inspection when commercial real estate is to be taken as collateral. Residential real estate is excluded.

7. Determine the prior, current and planned uses for the property. If any of these involve operations that used or use toxic chemical, require a Phase I audit.
8. To the extent possible, determine the prior, current and planned uses of all adjoining property. If any of these involve operations that used or use toxic chemicals, require a Phase I audit.
9. Conduct a visual inspection of the facility, preferably accompanied by the current owners. The following observations may trigger the need for a Phase I audit:
 - any evidence that chemicals are used in the operation of the facility.
 - discarded chemical containers.
 - waste piles of any type (ask about buried waste and the presence of underground storage tanks).
 - evidence of distressed vegetation of non-vegetative areas.
 - oily films on standing water
 - discolored soils
 - unusual odors.
8. Determine that all relevant environmental permits and/or notifications are in place. If not, require a Phase I audit. (Consult local regulatory authorities about requirements.)
9. Determine whether the facility has ever been involved in:
 - any citations, claims or complaints regarding environmental problems.
 - any notice of violations.
 - any environmental clean-up actions.

PAGE 2 - ENVIRONMENTAL QUESTIONNAIRE

LENDER OR SBA Report on Issues Covered by This Questionnaire:

Recommendation:

Acknowledgment By the Applicant:

I acknowledge that I have read this questionnaire and have responded to the issues and questions posed therein to the best of my knowledge.

Corporation: _____
Business Name

By: _____
Name & Title

(Other): _____
Business Name

By: _____
Name & Title

-M-E-M-O-R-A-N-D-U-M-

TO: SBA Lenders

**FROM: Paul Arrington, District Counsel
SBA North Florida District Office**

SUBJECT: Lender-Serviced Litigation

Whenever there is or will be litigation involving an SBA guaranteed loan, the lender **MUST** provide SBA with a narrative prepared by lender's counsel prior to taking any (or any additional) legal action **when any of the following apply:**

A party disputes the validity of the lender's claim(s) or lien(s);

Attorney's fees and legal costs are estimated to exceed \$5,000.00;

The lender has another outstanding loan to the borrower(s) or to any guarantor(s); or

There is any other potential conflict of interest between the lender and SBA with respect to the borrower(s) or the guarantor(s).

If none of the above conditions exist, then a pre-litigation narrative from counsel is not required; however, you should identify lender's counsel, discuss counsel's hourly rate and estimated number of hours and describe the services to be provided as part of your liquidation plan. When required, the narrative serves the purpose of setting forth the scope of legal work to be performed and the cost of each anticipated action. Counsel's narrative **MUST** address the following:

Strategy, including what expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion or by trial;

Information regarding all non-SBA debts owed by the borrower, its owners and guarantors to the lender, including the original amount of the obligation, current balance and current status;

Estimate of the recovery;

Risk of adverse precedent;

Actual or potential conflicts of interest;

Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;

Settlement alternatives;

Estimated timetable;

Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA; and

A cost budget. The budget should contain a fair estimate of the total cost of the litigation and the method of billing, i.e. hourly rate, flat fee or contingency fee. The budget should include associate and paralegal time as well as secretarial overtime (if it will be billed). Costs should also be itemized including but not limited to court costs, service of process, lien searches, photocopying and deposition transcripts.

You may submit counsel's narrative, when required, as a supplemental document to your liquidation plan.

FINAL WRAP UP REPORT

Borrower's Name: _____ SBA Loan Number: _____

11. Provide a narrative explaining how and when collateral was liquidated. Include a complete accounting of all disbursements and collections during the liquidation process to show the gross recoveries and the net amount applied on the loan. Attach an additional page if necessary. SBA reserves the right to request copies of invoices.

12. Identify remaining collateral: _____ Has it been abandoned? _____ Justification: _____ If remaining collateral includes a lien on personal residence, explain attempts to compromise the debt.: _____

13. Identify obligors that remain legally liable for the remaining deficiency balance and provide their most recent address: _____

Provide a summary of their financial condition along with an estimate of collectibility and **explain efforts by the bank to obtain a compromise settlement offer from each obligors:** _____

_____ Note: The purpose of gathering this information on loan principals is to enable SBA to make its mandatory update for each individual involved in the loan. This data is needed for post charge off activities conducted by SBA which may include: a) referral to DOJ Central Intake Facility for litigation, b) referral to private collection agencies for continued collection activities, c) referral to IRS and Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to IRS as income, f) reporting to Credit Bureaus, or g) inclusion on the federal debarment register.

14. Identify obligors that are no longer liable and the basis for their release (bankruptcy, compromise, etc.):

15. Attorney fees claimed for bankruptcy cases or other litigation? ____yes ____no. If yes, please provide copies of the legal documents identified in the required attachments below.

Required Attachments:

- Copies of site visit reports
- Copy of Lender Liquidation Plan
- Copy of completed Risk Management Data Form
- Copies of demand letters sent to each obligor
- Legal: Copies of Bankruptcy Notices and any **Bankruptcy Discharges**
Copies of Complaints, Pleadings/Motions, Court Orders
Documentation to support attorney fees

PLP LOAN
LIQUIDATION LETTER
AND PACKAGE

PLP LOAN LIQUIDATION LETTER

Date

Name

Bank

Address

City, State, ZIP

Re: Loan Name:
 SBA LOAN #

Dear :

In response to your notification, it is our understanding that the subject loan should be classified as "In Liquidation" status. As your institution is a PLP lender, you are required to liquidate the subject loan under PLP criteria **regardless** of whether the loan was made as a PLP loan.

It is also our understanding you will immediately purchase this loan from the Secondary Market.

After the liquidation process is completed and all liquidation recoveries have been applied to the outstanding principal balance, **you must make written demand to SBA to purchase the remaining guaranteed portion of the loan.**

You are encouraged to pursue reasonable workout attempts with the borrower, however, should liquidation still be necessary, your institution has authority to take all routine liquidation actions without prior SBA approval. However, the following actions **do** require prior SBA consent:

1. Preferences or conflicts of interest
2. Compromises with any obligor of the principal loan balance outstanding for less than the full amount due.
3. Acquisition or purchase of environmentally impaired or contaminated property.
4. Sales of SBA related collateral back to the original borrower, any obligor or guarantor on the loan, or to lender's associates or close relatives of lender's associates.

Authority to liquidate under PLP criteria is subject to the following conditions:

1. The lender must make and document a site visit to the borrower's business premises **and the site of any worthwhile collateral within 60 days of an unremedied default in payment, or, as soon as possible if there are assets of significant value that could be removed or depleted.** Site visit reports must contain an inventory of assets and an assessment of their condition and value, and include a review of books and records as feasible to determine use of loan proceeds and the existence of any unauthorized use of funds.
2. Whether or not a payment default exists, a site visit must be conducted within 15 days after the lender becomes aware of any event which causes a loan to be placed into liquidation status.
3. Reasonable attempts to enter into a prudent workout with the borrower must be made. The SBA liquidation officer must be notified in writing of a loan workout once three regular monthly payments have been made by the borrower under any workout plan. If payments are being received under a confirmed bankruptcy plan, provide a copy of the plan to SBA. The notification must include the repayment arrangements, date of last payment, next due date, principal balance of the loan, accrued interest, and amount collected during the liquidation process.
4. **Prior to commencing recovery procedures**, PLP lenders are to prepare a liquidation plan containing information referred to in SBA Form 1979 (enclosed). The lender must submit a liquidation plan to the agency for loans with a principal balance of \$50,000 or more **at the time of guaranty purchase along with your "Risk Management" Form.** For loans with a principal balance of \$50,000 or less, the lender must submit the liquidation plan with the Final Wrap Up Report (form enclosed) at the end of the liquidation process. SBA does not process or approve the plan beforehand **and submission of the plan to SBA does not constitute approval of the plan by the Agency or acceptance of its terms.**
5. Sales of collateral must be commercially reasonable, conform to local laws and practice and the lender's procedures on non-SBA loans, and consistent with generally accepted commercial banking practices used by prudent lenders.
6. Liquidation expenses paid by the lender must be customary and reasonable for the services obtained and consistent with local practice. SBA **will** examine expenses during PLP reviews **and at the time of guaranty purchase or completion of liquidation** to ensure that all expenses meet these guidelines.
7. **Please note, that, should Litigation arise, a Litigation Plan is required. Please refer to the attached Memorandum from Paul Arrington, District Counsel. You will also be required to provide SBA Counsel with all major pleadings. Litigation matters should be coordinated with SBA Counsel.**
8. Legal fees for PLP counsel cannot exceed those charged the lender for non-SBA litigation.

9. PLP lenders may not use private counsel for non-legal liquidation services.

10. The lender is required to submit written quarterly status reports for all loans with principal balances of more than \$50,000 at the time of guaranty purchase, and any acquired assets 6 months or older since acquisition.

11. Lender must notify the SBA in writing when a liquidation loan has been paid in full.

12. At the completion of the liquidation process, the lender must submit a Final Wrap Up Report (form enclosed) to the agency documenting the lender's actions and results.

If, during the liquidation process, you discover that pledged items worth more than \$5,000.00 are missing, or if there is evidence that any pledged property was sold, concealed, or otherwise disposed of with intent to defraud SBA or lender, a separate report must be made to SBA for referral to the Inspector General.

All actions by the lender must comply with Standard Operating Procedure 50-51-2, Loan Liquidation & Acquired Property, a copy of which is available from this office upon request.

Should you have any questions about the liquidation process, please call.

Sincerely,

Loan Specialist
Portfolio Management Division
(904) 443-19____

Enclosures: Liquidation Plan
 Risk Management Form
 Litigation Memorandum
 Wrap Up Report

Loan Name: _____

Date: _____

Loan #: _____

Action #: _____

LENDER LIQUIDATION PLAN FORMAT

22. Justification for transfer to "liquidation" status: (e.g., Non-Payment, Bankruptcy [attach 341 Notice - Meeting of Creditors], Property Abandoned, 3rd Party Litigation/Foreclosure by Prior Lienholder, Business Closed, other)

23. Cause of business breakdown & workout attempts: Include comments on management assistance offered and/or given, and attach copy of the most recent field visit report or memo. SBA requires that a field visit be made to the borrower's premises **and the site of any other worthwhile collateral** within 60 days of unremedied default in payment or as soon as possible if there are assets of significant value that could be removed or depleted. Whether or not a payment default exists, a site visit must be conducted within 15 days of any event which causes a loan to be placed into liquidation status.

24. Describe any "non-SBA" loans lender has with any borrower, guarantor or principal: If none, so state. If yes, please attach copies of loan documentation (e.g., Note, Security Agreement, UCC filings, Deed of Trust, Mortgage, etc.) and a proposal as to how you will allocate and share expenses and funds recovered.

25. List name, address, phone#, SSN and Tax ID# for all obligors and guarantors: Include copies of demand letters if sent, and whether life insurance is still in force if it was required.

26. List name, address, phone number and estimate of fees of lender's counsel if attorney fees will be paid: Include the hourly rate, estimated number of hours and a brief description of services to be provided.

27. General Recovery Plan: Briefly describe the proposed liquidation process and the estimated time. Discuss actions to be taken to dispose of all collateral (e.g., voluntary sale, abandonment, judicial or nonjudicial foreclosure, public auction, compromise settlement, deed in lieu, etc.). It is important to comment on any potential environmental/toxic concerns, whether hazard insurance is in effect or if purchase of insurance is recommended, and if there are any significant items of collateral missing. If it appears the liquidation value of all collateral is insufficient to fully repay the loan, include discussion of what other options are considered feasible compared with the estimated costs to pursue (e.g., litigation against guarantors). SBA procedures require that business assets be liquidated first and compromise alternatives be explored, if feasible, prior to foreclosure against a personal residence.

28. Estimate of Liquidation Recovery: Fill in actual or estimated expenses as applicable:

	Real Estate	Real Estate	Personal Prop.	Personal Prop.
Original Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Appraised Value	\$ _____	\$ _____	\$ _____	\$ _____
Current Liquidation Value/Estimate	\$ _____	\$ _____	\$ _____	\$ _____
<u>Less senior liens/taxes:</u>				
1st: _____	\$ _____	\$ _____	\$ _____	\$ _____
2nd: _____	\$ _____	\$ _____	\$ _____	\$ _____
3rd: _____	\$ _____	\$ _____	\$ _____	\$ _____
Estimated net value:	\$ _____	\$ _____	\$ _____	\$ _____
Expense Category				
Real Estate Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Personal Property Appraisal	\$ _____	\$ _____	\$ _____	\$ _____
Environmental Reports (i.e., Phase 1 or 2)	\$ _____	\$ _____	\$ _____	\$ _____
Insurance Coverage	\$ _____	\$ _____	\$ _____	\$ _____
Legal Fees	\$ _____	\$ _____	\$ _____	\$ _____
Care & Preservation of Collateral	\$ _____	\$ _____	\$ _____	\$ _____
Escrow/Commissions	\$ _____	\$ _____	\$ _____	\$ _____
Storage/Pickup/Asset Marshalling	\$ _____	\$ _____	\$ _____	\$ _____
Trustee Foreclosure (if applicable)	\$ _____	\$ _____	\$ _____	\$ _____
Auction/Sale Expenses	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____	\$ _____
Projected recovery after expenses:	\$ _____	\$ _____	\$ _____	\$ _____

Note: Attach copies of prior/current real and personal property appraisal summaries, copies of the field visit report/memo, and the executive summary of any environmental reports.

FOR SBA USE ONLY

LOAN OFFICER REVIEW AND RECOMMENDATIONS:

COUNSEL'S REVIEW AND COMMENTS:

SUPERVISOR'S REVIEW AND APPROVAL/DECLINE OF PLAN:

RISK MANAGEMENT DATA

THIS FORM MUST BE COMPLETED IN ITS ENTIRETY

SECTION 1 THRU 3 ONLY - IF INFORMATION IS NOT AVAILABLE, ENTER "0" (ZERO) IN THE APPROPRIATE SPACE

LOAN NAME: _____

13. Current History Indicator: (A, B, C)

Note: Use "A" if the credit rating is acceptable based on the normal credit review process; use "B" if the firm's credit rating is marginal; and use "C" if the company is a new business with no credit history.

14. Complete the following section only if the business has been in operation prior to the loan application. This section is for historical information only.

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

15. The following ratios and percentages are compiled from the balance sheet after the loan proceeds have been factored in (this section is used for start-up businesses and for projected data).

Current Ratio _____ to 1

Debt to Tangible Net Worth _____ to 1

Loan to Value at Fair Market Value _____ %

Loan to Value at Liquidation Value _____ %

Is this a real estate loan? Yes _____ No _____

Is this a piggyback loan? Yes _____ No _____

If Yes, is same lender involved? Yes _____ No _____

Is this a change of ownership? Yes _____ No _____

16. This section is to be completed only when the loan is transferred into liquidation

NET REALIZABLE VALUE AT DEFAULT

Note: The net realizable value of loan collateral is the total recovery that can reasonably be expected from the sale of an asset. You should start with the liquidation values for loan collateral (as described on Page 5 of Notice 5000-524 "Loan to Valuation - Liquidation"), or other values that can be clearly supported by loan documentation. Outstanding senior liens should then be deducted along with any taxes owed. Next, subtract anticipated sales costs plus expenses that will be incurred for care and preservation of the asset during the sale process.

M & E	\$ _____
F & F (Leasehold Improvements)	\$ _____
Inventory	\$ _____
Accounts Receivable	\$ _____
Commercial Real Estate	\$ _____
Residential Real Estate	\$ _____
Other	\$ _____

-M-E-M-O-R-A-N-D-U-M-

TO: SBA Lenders

**FROM: Paul Arrington, District Counsel
SBA North Florida District Office**

SUBJECT: Lender-Serviced Litigation

Whenever there is or will be litigation involving an SBA guaranteed loan, the lender **MUST** provide SBA with a narrative prepared by lender's counsel prior to taking any (or any additional) legal action **when any of the following apply:**

A party disputes the validity of the lender's claim(s) or lien(s);

Attorney's fees and legal costs are estimated to exceed \$5,000.00;

The lender has another outstanding loan to the borrower(s) or to any guarantor(s); or

There is any other potential conflict of interest between the lender and SBA with respect to the borrower(s) or the guarantor(s).

If none of the above conditions exist, then a pre-litigation narrative from counsel is not required; however, you should identify lender's counsel, discuss counsel's hourly rate and estimated number of hours and describe the services to be provided as part of your liquidation plan. When required, the narrative serves the purpose of setting forth the scope of legal work to be performed and the cost of each anticipated action. Counsel's narrative **MUST** address the following:

Strategy, including what expert witnesses will be needed and their estimated cost and whether the case can be disposed of by motion or by trial;

Information regarding all non-SBA debts owed by the borrower, its owners and guarantors to the lender, including the original amount of the obligation, current balance and current status;

Estimate of the recovery;

Risk of adverse precedent;

Actual or potential conflicts of interest;

Whether some form of Alternative Dispute Resolution (ADR) is advantageous, such as mediation, mini-trial or arbitration;

Settlement alternatives;

Estimated timetable;

Any proposed pro-rata allocation of fees and recoveries, if lender has one or more loans to the borrower, its owner or guarantors that are not guaranteed by SBA; and

A cost budget. The budget should contain a fair estimate of the total cost of the litigation and the method of billing, i.e. hourly rate, flat fee or contingency fee. The budget should include associate and paralegal time as well as secretarial overtime (if it will be billed). Costs should also be itemized including but not limited to court costs, service of process, lien searches, photocopying and deposition transcripts.

You may submit counsel's narrative, when required, as a supplemental document to your liquidation plan.

FINAL WRAP UP REPORT

Borrower's Name: _____ SBA Loan Number: _____

16. Provide a narrative explaining how and when collateral was liquidated. Include a complete accounting of all disbursements and collections during the liquidation process to show the gross recoveries and the net amount applied on the loan. Attach an additional page if necessary. SBA reserves the right to request copies of invoices.

17. Identify remaining collateral: _____ Has it been abandoned? _____ Justification: _____ If remaining collateral includes a lien on personal residence, explain attempts to compromise the debt.: _____

18. Identify obligors that remain legally liable for the remaining deficiency balance and provide their most recent address: _____

Provide a summary of their financial condition along with an estimate of collectibility and **explain efforts by the bank to obtain a compromise settlement offer from each obligors:** _____

_____ Note: The purpose of gathering this information on loan principals is to enable SBA to make its mandatory update for each individual involved in the loan. This data is needed for post charge off activities conducted by SBA which may include: a) referral to DOJ Central Intake Facility for litigation, b) referral to private collection agencies for continued collection activities, c) referral to IRS and Treasury for offset of any tax refund or other payments due the obligor, d) potential Federal salary/retirement offset, e) reporting deficiency balances to IRS as income, f) reporting to Credit Bureaus, or g) inclusion on the federal debarment register.

19. Identify obligors that are no longer liable and the basis for their release (bankruptcy, compromise, etc.):

20. Attorney fees claimed for bankruptcy cases or other litigation? ____yes ____no. If yes, please provide copies of the legal documents identified in the required attachments below.

Required Attachments:

- Copies of site visit reports
- Copy of Lender Liquidation Plan
- Copy of completed Risk Management Data Form
- Copies of demand letters sent to each obligor
- Legal: Copies of Bankruptcy Notices and any **Bankruptcy Discharges**
Copies of Complaints, Pleadings/Motions, Court Orders
Documentation to support attorney fees

**SBA FORM 1150
OFFER IN COMPROMISE**



U.S. SMALL BUSINESS ADMINISTRATION
OFFER IN COMPROMISE

NAME AND ADDRESS OF OBLIGORS (*proponents*)

NAME AND ADDRESS OF BORROWER

SOCIAL SECURITY NUMBER(S)

LOAN NUMBER

LOAN BALANCE

SEE INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING

1. This offer is submitted by the undersigned to compromise a claim of the Small Business Administration resulting from a loan to the above borrower which is now fully due and payable and for which I (we) am alleged to be liable.

2. In full settlement thereof I (we) hereby make the following offer:

3. The following facts and reasons are submitted as grounds for acceptance of this offer:

4. It is understood that this offer will be considered and acted upon in due course and that it does not afford relief from the obligation sought to be compromised unless and until it is accepted in writing by The Small Business Administration and there has been full compliance with the terms of the offer.

With knowledge of the penalties for false statements provided by 18 United States Code 1001 (*\$10,000 fine and/or five years imprisonment*) and with knowledge that this proposal is submitted to affect action by the Government; I (we) declare that I (we) have examined this offer, including accompanying schedules and statements, and to the best of my (our) knowledge and belief, it is true, correct and complete.

SIGNATURE OF PROPONENTS (*Person(s) making the offer*)

SIGNATURE

DATE

SIGNATURE

DATE

COMPROMISE OFFERS BASIC CHECKLIST

Instructions for Presenting Offer:

The offer made in item 2 should be clear and concise. Dollar amounts be given first followed by an indication of any concessions anticipated from the Agency (release of lien, etc.). Lump sum payment is the preferred method of concluding a compromise settlement. Special requirements may apply to installment payment settlements (i.e., confess-judgment note, etc.).

Provide in Item 3, the basic reasons as to why a compromise settlement is necessary.

Provide, as an attachment hereto, a reasonably current, complete, sworn statement of income and expenses on SBA Form 770, "Financial Statement of Debtor. All transfers and/or acquisitions of real property and major items of personal property since the date the debt to SBA was created must be itemized. Show names and addresses of transferees, relationship to obligor (if any) and the type, amount and disposition of any consideration received.

In case referred by the Department of Justice, a copy of DOJ Form DJ-35, "Financial Statement of Debtor" may be utilized instead of the aforesaid SBA Form 770. In such cases, a statement of any beneficiary status under a pending inheritance or an established trust should be included as an attachment thereto.

Elements of a Workable Compromise Offer:

1. Amount offered bears a reasonable relationship to the net amount recoverable through enforced collection.
2. No fraud or misrepresentation.
3. Full disclosure of financial capacity of obligor(s) has been made (SBA Form 770, etc.).
4. Borrower has ceased operations and all business collateral (assets) has been liquidated.
5. Participating bank, if any, concurs in the action.
6. Valuations provided for realty mortgaged to SBA or subject to judgment by SBA are supported.
7. Source of funds for payment of the offer clearly identified.

The items identified above are for general information and are provided primarily to assist in the proper development of a compromise package. While most cases can be decided using this "generally applicable" information, the Agency is not limited to these factors in any given matter.

SBA FORM 770
FINANCIAL STATEMENT OF DEBTOR

**FINANCIAL STATEMENT OF DEBTOR**

(INSERT THE WORD "NONE" WHERE APPLICABLE TO ANY OF THE FOLLOWING ITEMS)

1. NAME			2. DATE OF BIRTH (Month, Day and Year)		
3. ADDRESS (Include ZIP Code)			4. PHONE NO.	5. SOCIAL SEC. NO.	
6. OCCUPATION		SBA LOAN NUMBER		7. HOW LONG IN PRESENT	
8. EMPLOYER'S NAME		ADDRESS (Include ZIP Code)		PHONE NUMBER	
9. MONTHLY INCOME:		10. OTHER EMPLOYERS WITHIN LAST 3 YEARS			
Salary or wages \$ _____		Name		Address	
Commissions \$ _____				Dates of Employment	
Other (state source) \$ _____					
Total \$ _____					
11. NAME OF		SOCIAL SEC. NO.		12. DATE OF BIRTH (Month, Day and Year)	
13. OCCUPATION				14. HOW LONG IN PRESENT	
15. SPOUSE'S EMPLOYER (Name)		ADDRESS (Include ZIP Code)		PHONE NUMBER	
16. MONTHLY INCOME OF SPOUSE:		17. OTHER EMPLOYERS WITHIN LAST 3 YEARS (Of Spouse)			
Salary or wages \$ _____		Name		Address	
Commissions \$ _____				Dates of Employment	
Other (state source) \$ _____					
Total \$ _____					
18. OTHER DEPENDENTS:			23. FIXED MONTHLY EXPENSES: (TO NEAREST DOLLAR)		
NUMBER			Rent or House Payment \$ _____		
Name Relationship Age			Utilities \$ _____		
			Food \$ _____		
			Interest \$ _____		
			Insurance \$ _____		
			Debt repayments:		
			Household furnishings \$ _____		
			Personal Loans \$ _____		
			Automobile \$ _____		
			Doctors and Dentist \$ _____		
			Other (Specify) \$ _____		
19. TOTAL MONTHLY INCOME OF DEPENDENTS (Except Spouse)			TOTAL FIXED MONTHLY EXPENSES \$ _____		
\$ _____					
20. FOR WHAT PERIOD DID YOU LAST FILE A FEDERAL INCOME TAX RETURN?					
21. WHERE WAS TAX RETURN FILED?					
22. AMOUNT OF GROSS INCOME REPORTED					
\$ _____					
24. ASSETS: (Fair Market Value)			(SHOW AMOUNTS TO NEAREST DOLLAR)		
Cash			LIABILITIES		
Checking accounts: (Show location)			Bills owed (grocery, doctor, lawyer, etc.)		
Savings Accounts: (Show location)			Installment debt (car, furniture, clothing, etc.)		
Cash surrender value of life insurance			Taxes owed:		
Motor Vehicles:			Income		
Make Year License No.			Other: (Itemize)		
Debts owed to you: (Name of debtor)			Loans payable (to banks, finance companies, etc.)		
			Judgments you owe (Held by whom?)		
Stocks, bonds and other securities:			Small Business Administration		
			Loans on Life Insurance		
Household furniture and goods			Mortgages on Real Estate		
Items Used in Trade or Business			Margin Payable on Securities		
Other Personal Property; (Itemize)			Other debts: (Itemize)		
Real Estate: (Itemize)					
Other Assets: (Itemize)			Total Liabilities		
			\$ _____		
TOTAL ASSETS:			CONTINGENT LIABILITIES		
\$ _____			\$ _____		



25. LOANS PAYABLE:					
Owed To	Date of Loan	Original Amount	Present Balance	Terms of Repayments	How Secured
		\$	\$	\$	
		\$	\$	\$	
		\$	\$	\$	

26. REAL ESTATE OWNED: (Free & Address	How Owned (Jointly, individually, etc.)	Present Market \$
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27. REAL ESTATE BEING PURCHASED ON CONTRACT OR MORTGAGE Address	Date acquired	Balance Owed \$
	Name of Seller or Mortgagor	
	Purchase Price \$	Date Next Cash Payment
	Present Market Value \$	Amount of Next Cash Payment \$

28. LIFE INSURANCE POLICIES: Company	Face Amount	Cash Surrender Value	Outstanding Loans
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

29. LIST ALL REAL AND PERSONAL PROPERTY OWNED BY SPOUSE AND DEPENDENTS VALUED IN EXCESS OF \$200:

30. LIST ALL TRANSFERS OF PROPERTY, INCLUDING CASH (BY LOAN, GIFT, SALE, ETC.), THAT YOU HAVE MADE WITHIN THE LAST THREE YEARS. (LIST ONLY TRANSFERS OF \$300 OR OVER.)			
Property Transferred	To Whom	Date	Amount
			\$
			\$
			\$

31. ARE YOU A CO-MAKER, GUARANTOR, OR A PARTY IN ANY LAW SUIT OR CLAIM NOW PENDING?
☐ YES ☐ NO IF YES, GIVE DETAILS

32. ARE YOU A TRUSTEE, EXECUTOR, OR ADMINISTRATOR? ☐ YES ☐ NO IF YES, GIVE DETAILS

33. ARE YOU A BENEFICIARY UNDER A PENDING, OR POSSIBLE, INHERITANCE OR TRUST, PENDING OR ESTABLISHED? NO ☐ YES ☐
 IF YES, GIVE DETAILS

34. WHEN DO YOU FEEL THAT YOU CAN START MAKING PAYMENTS ON YOUR SBA DEBT?	35. HOW MUCH DO YOU FEEL THAT YOU CAN PAY SBA ON A MONTHLY OR PERIODIC BASIS?
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With knowledge of the penalties for false statements provided by 18 United States Code 1001 (\$10,000 fine and/or five years imprisonment) and with knowledge that this financial statement is submitted by me to affect action by the Government, I certify that all the above statement is true and that it is a complete statement of all my income and assets, real and personal, whether held in my name or by another.

Under the provisions of the Privacy Act, loan applicants are not required to give their social security number. The Small Business Administration, however, uses the social security number to distinguish between people with a similar or the same name. Failure to provide this number may not affect any right, benefit or privilege to which an individual is entitled by law but having the number makes it easier for SBA to more accurately identify to whom adverse credit information applies and to keep accurate loan records.

Any Person concerned with the collection of this information, its voluntariness, disclosure or routine under the Privacy Act may contact the Freedom of Information/Privacy Acts Division, Small Business Administration, 409 3rd St., S.W., Washington, D.C. 20416

SIGNATURE	DATE
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NOTE: USE ADDITIONAL SHEETS WHERE SPACE ON THIS FORM IS INSUFFICIENT.

PLEASE NOTE: The estimated burden for completing this form is 30 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0012). **PLEASE DO NOT SEND FORMS TO OMB.**

SBA FORM 770 (3-00) SOP 50 51 PREVIOUS EDITION OBSOLETE

SOP 50 51 2A
CHAPTER 8
LENDER-SERVICED LIQUIDATION

CHAPTER 8

LENDER-SERVICED LIQUIDATIONS

1. What is SBA's Policy on Lender Liquidations?

a. It is SBA's policy that all lenders must:

- (1) Service and liquidate all loans which were approved on or after October 1, 1997. For loans approved before October 1, 1997, all lenders are expected to service and liquidate loans they have originated;
- (2) Execute an SBA Form 152, "Participation Certificate," showing SBA's guaranty percentage of the loan;
- (3) Submit a liquidation plan (Refer to Chapter 10, "Special Programs," for any exceptions);
- (4) Maximize recovery in the sale of collateral in the minimum amount of time; and
- (5) Avoid acquiring assets whenever possible through the aggressive marketing of loan collateral.

NOTE: Whenever feasible, you are strongly encouraged to upgrade the legal required advertising for a UCC sale, or for a judicial or summary foreclosure on real estate, to meet SBA's requirements for a "comprehensive public sale."

b. If SBA chooses to service or liquidate the loan:

- (1) The lender must assign the loan instruments to the SBA;
- (2) You must have the DD's or designee's approval on an SBA 327 justifying this action; and
- (3) The Agency must execute an SBA Form 156, "Certificate of Interest", showing lender's percentage of the loan.

(See CFR § 120.512.)

2. Lender Oversight and Managerial Reviews.

- a. During the managerial reviews, lenders who are not adequately liquidating loans must be identified, especially those in the PLP, LowDoc, and FASTRAK programs.
- b. Lenders with chronic problems and lenders who do not take suggested corrective actions must be identified by the DD.

The DD must:

- (1) Promptly contact the lenders;
- (2) Must meet with the appropriate officials of those institutions to discuss SBA liquidation procedures and expectations under the Federal regulations, SBA policy and procedures, the 750 agreement, any supplemental guaranty agreements and the authorization; and,
- (3) Annually, the DDs must provide a summary report to their regional administrators and Headquarters on lender liquidation deficiencies within 60 days of the end of each fiscal year.

3. What Lender Programs Do the Procedures in this Chapter Apply to?

The liquidation procedures outlined in this chapter apply to the 7(a) guaranty loan program as well as all other SBA/lender programs. Any exceptions to these procedures are outlined in Chapter 10, "Special Programs," for certain loan programs such as:

- a. LowDoc;
- b. FASTRAK;
- c. Preferred Lender Program (PLP);
- d. Certified Lender Program (CLP);
- e. Certified Development Company (CDC) Program (503/504 loans);
- f. CAPLines; and
- g. Export Working Capital Program (EWCP).

4. What Should the Lender Do When it Appears a Borrower May Not Repay Its Loan?

When the lender determines that there is no longer any reasonable possibility that a borrower will be able to repay the SBA guaranteed loan in an orderly manner, it should immediately contact the SBA to begin the process for enforcing recovery. No two liquidations are the same. Therefore, the following paragraphs should assist the lender in reaching a resolution.

5. When Must a Lender Notify the SBA Servicing Office of an Adverse Event?

The participating lender must notify the SBA office servicing the loan when there is an adverse event. The notice should be by telephone, followed with a fax and/or written confirmation. If a servicing center is servicing the loan, it will take appropriate action and forward the loan file to a local field office, if appropriate.

6. What are Adverse Events?

Adverse events include, but are not limited to:

a. Foreclosure or other legal action.

The institution of a foreclosure action or other legal action against the borrower or other obligor which adversely impacts SBA's interest in any worthwhile collateral securing a loan or guaranty.

b. Bankruptcy.

The borrower, a significant obligor, or a person in possession of collateral has filed a voluntary petition or an involuntary petition has been filed against the borrower under any chapter of the Bankruptcy Act.

c. Receiver appointed or other legal action.

A receiver has been appointed, an assignment for the benefit of creditors has been made, or other legal action has been taken to liquidate collateral or to force a change in management or ownership.

d. Abandonment.

Substantial collateral has been abandoned by the borrower.

e. Dissipation of collateral.

Substantial collateral is being, or is in danger of being dissipated.

f. Other.

Any other circumstance which may substantially and adversely affect the joint position of the lender and SBA.

7. How Do You Handle an Adverse Event if the First Notice is a Liquidation Plan?

If the first notice you receive from the lender is the lender's proposed liquidation plan, you or the line supervisor **must** contact the lender as soon as possible following receipt of the plan to ascertain the essential facts. During the conversation, you (or the line supervisor) must:

- a. Make certain that the lender will make the required field visit; or
- b. Advise the lender that no action, including making demand on the borrower, is to be taken without SBA's written approval.

8. What Steps Should SBA Take After Being Notified of an Adverse Event?

- a. Discuss requirement of field visit to the borrower.

Once you know about any event which creates an "in liquidation" situation, the lender must visit the borrower's business premises. If the lender does not make the field visit within the time frame noted below, the lender must document the reason for not doing so, and you must establish with the lender a new deadline for the visit with an SBA 327.

If it is a lender serviced loan, the lender must perform the field visit. With the exception of PLP, LowDoc, and FA\$TRAK lenders, the lenders are required to notify SBA of their findings. The PLP, LowDoc, and FA\$TRAK lenders must document their findings in the borrower's loan file.

- b. Site Visits - "Lender Serviced Loans."

- (1) Lenders must make site visits and prepare a comprehensive and detailed report containing an inventory of assets and an assessment of their condition.

- (a) This action must be performed:

- i. Within 60 days of an unremedied default in payment; or
- ii. As soon as possible after default if there are assets of significant value that could be removed or depleted.

- (b) Whether a payment default exists, a site visit must be conducted within 15 days of an event which would cause a loan to be placed into liquidation status, including:
 - i. Business shutdown or abandonment;
 - ii. Foreclosure or other adverse action affecting significant collateral;
 - iii. Bankruptcy or receivership; or
 - iv. Any reason to believe collateral is being lost or its value diminished.
- (2) The recommending official/approving official (e.g., loan officer/line supervisor) will review:
 - (a) The site visit reports at the time of guaranty purchase; and
 - (b) The quality and appropriateness of real estate appraisals, personal property appraisals, and any environmental surveys.
- (3) Alternative to site visits by lender.
 - (a) Lenders may engage third party inventory/appraisal contractors to perform the same duties provided the costs are reasonable in relation to the services provided.
 - (b) Minimum review standards are outlined in subparagraph 8.c., "Minimum collateral evaluation and appraisal standards."
 - (c) If the lender's information conforms in all respects to the SBA standards, SBA personnel will not need to make a site visit, nor will one be necessary prior to the computation of a protective bid for sale purposes.

c. Minimum collateral evaluation and appraisal standards.

- (1) A meaningful collateral inspection by lenders and/or SBA is both a comprehensive inventory and a valuation of the collateral. The following is necessary to provide a meaningful inspection of personal property collateral.
 - (a) Specific description and identification including serial numbers.
 - (b) Photographs or videotapes of larger or more significant pieces to establish condition, identity, and pictorial evidence.

- (c) Establishment of individual liquidation values.
 - (d) Evaluation of inventory (especially of retail items).
- (2) This can either be done by videotaping or by actual count. The latter is only necessary if there is sufficient value in the inventory to warrant consideration of sale, and it is needed to verify or establish the value of the inventory on the basis of retail price or cost.
 - (3) Retail inventory firms are generally economical and efficient and can provide an accurate accounting of goods.
 - (4) A timely and comprehensive inspection may improve the overall recovery on loans where chattels have been overlooked or ignored.
 - (5) A thorough review includes an analysis of the use of loan proceeds to compare with assets currently on site.
 - (a) Any differences should be addressed in discussions with the borrower.
 - (b) The focus is to evaluate early and effectively in a manner appropriate for the collateral involved. (For instance, if a borrower is a small rural store with little or no appreciable inventory, the cost of having a contractor evaluate and dispose of this asset might well prove counterproductive. On the other hand, if one is working with a retail store where inventory is the only significant source of recovery, it is very important to have a quick and reliable measure so liquidation personnel can have the data necessary to formulate liquidation and disposal methods and alternatives.)
 - (c) If at all possible, site visits should include a review of the borrower's books and records to determine whether any funds were inappropriately taken out of the company or used for unauthorized purposes.
 - (d) In reviews of defaulted loans, the Inspector General's office has frequently found that unauthorized use of funds has occurred but gone undetected, because books and records were not reviewed.
 - (e) In addition, you must make a preliminary review of security instruments and document the amount and condition of the collateral before you prepare the SBA 327 establishing any protective bid in the event of foreclosure sale.

(See Chapters 6 and 10, "SBA-Serviced Liquidations" and on "Special Programs" for exceptions.)

d. Order lien searches as appropriate.

Lenders must first determine their exact lien position prior to taking any steps in the foreclosure process.

e. Order appraisals as appropriate.

If it is determined that an appraisal is needed, the appraisal must be no older than 1 year to be classified as current. (See Chapter 16, "Appraisals.")

f. Determine if any environmental issues exist.

The lender must be alert for possible environmental problems (see Paragraph 6-15 titled, "Environmental Considerations").

g. Consider potential for workout.

If the borrower is still operating, assess the potential for workout or restructure of the account. (See Chapter 5, "Problem Loans and Workout Situations.")

h. Coordinate liquidation with the lender.

If the borrower has ceased operations or enforced collection is necessary, you should discuss plans for liquidation with the lender. You should reach a tentative agreement with the lender regarding the steps to be taken.

i. Consider whether to transfer into litigation.

You must discuss with counsel any questions regarding the possibility of placing a loan into litigation.

9. What Should the Lender and SBA Do if Immediate On-Site Action is Necessary?

- a. If the needed action is "routine" (e. g., changing locks on a vacated building, ordering a lien search, or obtaining an appraisal) then you may give approval to act.
- b. If the needed action is "non-routine," you should call and clear the matter with your line supervisor and counsel, when necessary. Once cleared, you may take (or give approval to take) the action. This information is to be documented either in the field visit report or the liquidation plan as well as documented on an SBA 327.

10. What are the Factors to Consider in Determining that a Lender Should NOT Liquidate a Loan?

a. Competing liens or loans held by lender.

- (1) If:
 - (a) The SBA and the participating lender have competing liens against any of the borrower's assets; or
 - (b) The lender has a non-SBA loan to the same borrower or its principals;
- (2) Then the lender must not be allowed to handle the liquidation, unless:
 - (a) Any disputes are resolved prior to the commencement of such action; and
 - (b) There is a written agreement as to the distribution of funds expected to be realized.
- (3) In such cases, you must verify that the lender has properly distributed all funds received. (See Chapter 7, "SBA's Methods of Recovery from Collateral.")

b. Lender's past performance.

If a lender's past efforts at liquidation were unsatisfactory (poor results, excessive costs, poor responsiveness), SBA should not allow the lender to liquidate until the problems are resolved.

NOTE: You must complete an SBA 327 justifying this action.

11. What Happens When the Lender Liquidates a Loan?

The following steps must be taken:

a. Employment of a public auction firm.

If the lender hires an auctioneer for purposes of meeting the "commercially reasonable" test, the following information must be obtained.

- (1) The liquidation plan must state that SBA will be made whole if acts or omissions by the auctioneer cause SBA loss. There must be sufficient protection afforded the lender against misconduct or negligence of the auctioneer. This can be ensured through proper liability insurance and bonding

that is either required and/or customary and reasonable. (See Chapter 15, "Contracting With Auction Firms.")

- (2) The lender may require the auction firm to provide a bond in the amount of the anticipated sale proceeds. This will generally only cover personal property as proceeds from sale of real estate are usually controlled by the trustee or other selling agent.
- (3) The lender may use the requirements of SBA in hiring an auction firm as outlined in Chapter 15, "Contracting with Auction Firms."

b. Submission of a liquidation plan to SBA by the lender.

- (1) A standardized liquidation plan format (see appendix 15) has been developed by FA to ensure that liquidation instruction and policies provided to lenders are consistent.
- (2) The lender must attach to the plan the "Underwriting Characteristics" of the loan. (Refer to Paragraph 4-8 titled, "Risk Management Data Base, Loan Underwriting Characteristics," for additional information.)
- (3) The standardized liquidation format has been developed for use by ALL lenders.
- (4) The lender must submit a liquidation plan to SBA before starting liquidation action on any loan with a principal balance of \$50,000 or more at the time of default. However, SBA approval is required for non-routine (contested) litigation, or litigation with anticipated costs exceeding \$3000. For a loan below \$50,000, the liquidation plan is required at the time of the lender's request for guaranty purchase. See Chapter 10, "Special Programs," for liquidation plan requirements for individual lending programs.
- (5) The lender must use the SBA's standardized lender liquidation plan format.
- (6) You may customize this plan to fit local law and procedures as long as the essential data is captured.
- (7) Major deviations must be approved in advance by the Office of Borrower and Lender Servicing (BLS).

NOTE: Refer to Chapter 10, "Special Programs" (e.g., PLP, CLP, LowDoc, etc.) for the requirements of liquidation plans.

c. **Control of sale proceeds.**

The auctioneer or other selling agent must be required to deposit the gross proceeds from the sale of the collateral or Colpur in an escrow account pending payment of authorized expenses/fees and maintain a detailed accounting of the sale. The escrow account should be, if possible, an interest bearing account and identified as being for the benefit of the specific SBA related loan.

d. **Reports to SBA.**

- (1) The lender must submit quarterly status updates for:
 - (a) All liquidation cases beginning at the time of guaranty purchase; and
 - (b) Acquired real property (REO, colpur) beginning 6 months after acquisition.
- (2) These reports must explain what recovery action has taken place since the start of liquidation or the last report, and indicate estimated time to complete the liquidation process or Colpur sale.
- (3) Any circumstance which may substantially and adversely affect the joint position of the lender and SBA must be reported immediately.
- (4) The SBA reserves the right to request additional liquidation status reports at any time.
- (5) This report is not required for FA\$TRAK loans or loans serviced by PLP under \$50,000 principal at the time of default.

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12. **The Lender's Liquidation Plan is Reviewed and Approved as Follows.**

- a. The recommending official must promptly review the liquidation plan making appropriate recommendations to the approving official.
- b. Counsel must review for reasonableness of legal fees and the legal procedures to be undertaken.
- c. The approving official must document the approval of the liquidation plan in LLTS within 30 business days following approval.
- d. The approving official may approve the plan in LLTS or by use of a 327 action.

NOTE: Refer to Chapter 10, "Special Programs" (e.g., CLP, PLP, LowDoc, etc.) for the requirements relating to liquidation plans.

13. What if the Lender Requests a Change to the Liquidation Plan?

It is not unusual for liquidation plans to be changed as events unfold. The lender must obtain the SBA's approval before proceeding with major changes in the plan and expenses.

a. Procedure.

When possible, the lender should submit a written proposal to the SBA. The SBA will then evaluate the proposal and approve any change with a 327 action.

b. Urgency versus documentation.

Sometimes situations require swift or even immediate action to protect the interests of the Government. You and the lender should discuss the situation and possible steps to take. Once you reach a general agreement, you must brief the line supervisor (and counsel, if appropriate). You must obtain verbal approval from the approving official before you relay consent to the participant. Document agreed changes should be implemented as soon as practical with a 327 action.

14. What if SBA Requests a Change to the Liquidation Plan?

When the liquidation plan is submitted to SBA for approval, the lender must adhere to changes requested by SBA.

15. What are the SBA Liquidation Officer's Responsibilities for Follow-Through?

You must maintain a close working relationship with the lender throughout the course of the liquidation. A summary of all contacts, attempted contacts, and reviews must be entered into the LLTS chronological record.

a. Ongoing contact.

The lender must provide copies of significant documentation such as letters, sales notices, and reports as they occur. Such material should be reviewed by the liquidation officer (and counsel, if appropriate), handled as deemed necessary and placed in the loan file. In addition, the lender or its counsel must provide SBA counsel and you with copies of all pleadings.

b. 90 Day reviews.

You must make telephone, written, or face-to-face contact with the lender handling the liquidation of the account at least once every calendar quarter.

c. Supervisory review.

The supervisory official must review the lender-serviced accounts using LLTS every calendar quarter on:

- (1) All liquidation accounts that have been in liquidation 180 days or more;
- (2) Colpur accounts (see Chapter 11, "Collateral Purchased by SBA and Lender."); and
- (3) A random sample of 25 percent of all liquidation accounts under 180 days.

The review may be conducted either electronically or face-to-face with the assigned liquidation official. If drift appears in the random review, a more detailed review is required.

d. Field visits.

Field visits to the borrower's premises and to the lender's office should be made from time to time during the liquidation process.

e. Attendance at sales.

- (1) An SBA loan officer need not attend public sales conducted by the lender, particularly if:
 - (a) An SBA representative has viewed, within the past 120 days, the collateral to be offered for sale; or
 - (b) The SBA determines that such attendance would not be necessary to protect SBA's position.
- (2) A representative of the lender must be in attendance at sales of worthwhile assets.
- (3) In such cases, the lender must send the SBA a report of the events which took place at the sale. Also, the lender must send the SBA a copy of the auctioneer's (or other selling agent's) accounting. **Repeated failure of the participant to furnish the required documentation may be justification to revoke the SBA Form 750 Agreement of the participant.**

f. Monitoring expenses and recoveries.

You must ensure that liquidating lenders keep expenses in line with the agreed upon liquidation plan. You must also ensure that they properly apply recoveries from the

liquidation process, especially when there are competing liens or non-SBA loans involved.

16. How Does the SBA and the Lender Handle Insurance?

The SBA usually does not purchase or continue premiums on insurance during liquidation of the collateral. However, banks usually do purchase or maintain hazard insurance on the collateral as well as public liability coverage and may ask SBA to share in the premium expense. (See Chapter 22, "Insurance Property, Life and Public Liability.")

17. May Lenders Who are Liquidating SBA Loans Use Private/Negotiated Sales?

Yes. Lenders who are liquidating SBA loans may use private/negotiated sales if:

- a. It is practiced in similar sales of non-SBA assets; and
- b. The sales were disclosed in their liquidation plan or subsequent amendments to the plan.

The use of private/negotiated sales are subject to certain conditions, which are described in the following paragraphs.

(See 13 CFR 120.540 c(1).)

18. What are the Main Requirements for a Private/Negotiated Sale Prior to an Actual Foreclosure?

The requirements for the lender to use private/negotiated sales are:

- a. The real estate or personal property must be free and clear of all liens or the lienholders must cooperate in the sale and transfer of title; preferably within 120 days and
- b. A current appraisal no older than 1 year must exist, (See Chapter 7, "SBA's Methods of Recovery from Collateral.")

19. What are the Limitations on the Lender's Use of Private/Negotiated Sales?

Lenders conducting the liquidation may conduct private/negotiated sales as follows.

- a. **Private UCC sales.**

The uniform commercial code (UCC) provides means for conducting private sales of collateral by secured parties in the event of default. The liquidating lender may conduct private UCC sales of collateral without limits as to size/amount, provided:

- (1) The approach used is similar to the means used by the lender in its liquidation of non-SBA loans;
- (2) The sale is deemed to be commercially reasonable under the circumstances;
- (3) The sale satisfies the provisions of the Bulk Sales Act; and
- (4) The expected net recovery at least equals the net amount estimated to be realized from a public sale.

b. Sales of a "going" business in its entirety.

A favorable aspect of private/negotiated sales is that they can provide a means to sell the collateral as an operating entity. This may result in a larger recovery, depending on the circumstances. Accordingly, the approving official may authorize the liquidation lender to conduct private/negotiated "going" business sales of collateral in its entirety, without regard to loan size or estimated recovery amount, provided the prerequisites indicated in the prior subparagraph, "Private UCC Sales" are met.

c. Sales to existing owners.

Private sales of collateral may not be made to existing owners under any circumstances.

d. Costs of sale.

Reasonable costs of advertising, labor, and fees are permissible on all sales of collateral, even if those costs are not specifically described in the liquidation plan.

e. Term sales.

- (1) Private sales on terms are subject to the same requirements as other terms sales of collateral or Colpur. Use SBA documents if possible, practical and agreeable to the lender.
- (2) Before purchase of an SBA guaranty, a lender financed sale of assets (seller carryback and/or takeback) on a loan it is liquidating does not require SBA's approval, and will reduce the loan balance by the amount of the sale.
- (3) After purchase, a lender may sell assets (through a note receivable) on a loan it is liquidating with SBA's prior written approval.
- (4) See Paragraph 7-6 titled, "Is "Term Financing" Available?" and in Paragraph 11-19 titled, "When Can You Sell on Terms?"

20. Can a Lender Sell Colpur at a Private or Negotiated Sale?

Yes. A lender may conduct private or negotiated sales on Colpur accounts regardless of the dollar amount involved. (See Chapter 11, "Collateral Purchased (Colpur) by SBA and Lender."

21. What are the Limitations and Restrictions on the Lender's Handling of Liquidations?

The SBA's limitations and restrictions on the lenders handling of the liquidation of SBA guaranteed loans are essentially incorporated in three requirements as follows.

- a. The SBA must give its consent to the general liquidation plan at the outset (including anticipated litigation) and whenever significant modifications to the plan are needed.
- b. The lender must follow procedures which:
 - (1) Are consistent with generally accepted practices used by prudent lenders; and
 - (2) Are required by this SOP, SBA's rules and regulations, and SBA's loan documents.

In this regard, the SBA expects that the participant will use the same degree of prudence it uses when it liquidates its non-SBA loans.

- c. Prior written consent must be obtained from SBA in certain circumstances.

22. When Must the Lender Obtain the SBA's Prior Written Consent?

The lender handling the liquidation of a loan must obtain SBA's prior written consent in the event of any of the following.

- a. **Restrictions on sales to associates of participants.**

Associates of participants must not bid or purchase directly or through agents on their own account at any SBA related sale. This includes sales of collateral or Colpur conducted by either the SBA or the lender. Written permission from the SBA is required to sell any SBA related collateral or Colpur to a close relative who is not a member of the household of participant's associates. (See Chapter 4, "General Guidelines for Liquidation Activities" for definitions and procedures.)

- b. **Legal fees.**

The SBA counsel must review proposed litigation and make a decision on the proper forum to bring an action.

Legal fees must not exceed more than 10 percent of the amount agreed to by SBA in the liquidation plan, as amended. If legal fees exceed the amount of recovery through liquidation on the loan, no payment of those fees may be made unless fully justified and approved by SBA 327.

c. Protective bids.

A protective bid is:

- (1) The amount of lender's bid at sale; or
- (2) Established based on the current appraisal and related expenses associated with the foreclosure sale.

Except for PLP, LowDoc and FA\$TRAK loans, the SBA must concur with the lender's recommendation for a protective bid and to subsequent changes of more than 10 percent if a protective bid is entered. For more information related to protective bids, see Chapter 7, "SBA's Methods of Recovery from Collateral."

d. Compromise of debt.

Lenders must not unilaterally compromise an SBA account.

e. Release of an obligor.

Lenders must not unilaterally release any obligor on an SBA loan. (See Chapter 10, "Special Programs" for any exceptions.)

f. Variances from lender's usual procedures.

When the proposed actions vary from either the lender's or the SBA's usual liquidation procedures, you must document the circumstances. A 327 action with counsel's comments is required.

g. Matters covered by the guaranty agreement.

The SBA Form 750, "Loan Guaranty Agreement," (with the participant) specifies certain matters which require agreement between the SBA and the lender. The following actions must be approved by SBA if not contained in the lender's liquidation plan.

- (1) Accelerate the maturity of the note. (If the need for immediate action exists, an SBA 327 stamped letter from the participant is sufficient for this action.)
- (2) Make or consent to any substantial alteration in the terms of the Note or related loan instruments.
- (3) Approve any release, substitution, or exchanges of collateral, except where the value released does not exceed 20 percent of the original loan amount.
- (4) Sell, assign, or transfer the note or related loan instruments.
- (5) Sue upon the note or related loan instruments.
- (6) Waive any claim against a borrower, guarantor, standby creditor, or other obligor (see Chapter 10, "Special Programs").
- (7) Purchase, pay installments on, or pay in full a prior lien. (See Chapter 9, "Purchasing SBA's Guaranty" in SOP 50 50, Loan Servicing.)

23. How Should a Disagreement with the Lender be Resolved?

- a. An impasse will be handled as an exception to policy.
- b. The approving official and or the district director must make a personal effort to reach an agreement with the participant before the matter is forwarded to the Office of Borrower and Lender Servicing.

24. How Must You Apply the Proceeds from Liquidation?

When you are satisfied as to the amount of the expenses and the division of the recovery, the net proceeds (lender's out-of-pocket liquidation expenses can be paid first) from the liquidation process must be applied as follows.

- a. When the SBA guaranty has NOT been purchased, the participant will be allowed to recover up to 120 days of interest from liquidation proceeds, using the interest rate in effect at payment default. All other proceeds received from liquidation must be applied by the lender to the principal balance of the loan. The SBA will then pay only its portion of the principal balance outstanding with no accrued interest at the time of the guaranty purchase. (See SOP 50 50, Chapter 9, "Purchasing SBA's Guaranty.")
- b. When the SBA guaranty HAS been purchased, the participant must apply the net proceeds first to principal, then to interest, unless directed otherwise by SBA. The lender must then remit SBA's share of the net proceeds to the Small Business

Administration, Denver, CO 80259, within 15 days from the time the lender receives the funds from the borrower or from collateral sales, together with:

- (1) An accurately and completely filled out SBA Form 172, "Transaction Report on Loan Serviced by Lender" (see appendix 2); and
- (2) An itemized accounting of income and expenses. Denver will send an electronic notice of funds received to the districts.
- (3) Prior to remitting SBA's share, the lender may deduct a servicing fee for collecting SBA's share of a borrower's payment on a loan where SBA has purchased the guaranty (an XGP loan) and it is in liquidation.
- (4) The lender must compute the fee based on SBA's participation in the loan and the number of days of interest collected. (For method of computing the fee, see SBA Form 172, "Transaction Report on Loan Serviced by Lender.") A lender must not collect a servicing fee from principal received (for example, payment from liquidation proceeds).

25. Improving the Timeliness of Collections From Lenders.

SBA is seeking to improve the processing of all Agency cash receipts and payments. SBA requires lenders to complete all cash flow transactions in a more timely and accurate manner, taking maximum advantage of technologies, such as electronic funds transfer and electronic data interchange. As stated above, all funds received by lender, net of proper expenses, must be remitted to the Small Business Administration, Denver, CO 80259, within 15 days from the receipt date of payment from the borrower or from collateral sales, detailed on a properly completed SBA Form 172.

- a. Reviews of lenders participating in the Preferred-Lender Program (PLP) and Certified-Lender Program (CLP) will include a review for compliance with the 15-day payment timeframe. Lenders that are found not to be making timely payments may be subject to corrective actions by the Agency.
- b. Servicing and liquidation expenses paid by the lender must be customary and reasonable for the services obtained and consistent with local practice. The SBA will examine expenses during lender reviews and at the time of guaranty purchase or completion of liquidation to ensure that they meet these guidelines. Particular emphasis will be placed on review of legal expenses.

26. How Can Loans Be Canceled or Charged-Off?

An account which has been serviced/liquidated by the lender can be canceled or charged off in several ways.

a. Cancellation of the SBA guaranty.

The approving official may approve cancellation of the SBA guaranty in instances where SBA has not honored its guaranty and will not be requested to do so. You must send a copy of the SBA 327 approving cancellation to OFO.

b. Charge off of the loan.

If the SBA has honored its guaranty and there is no expectation of further worthwhile recovery, you may charge off the loan with counsel's approval. You must review the liquidation actions by the lender to ensure that the liquidation plan was followed and that no observable harm to SBA resulted from the lender's actions. The SBA 327 recommending charge off must include a statement of this finding. (See Chapter 18, "Charge Off Procedures.")